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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 Mass, 3/F

Washington, D.C. 20536

JUL 17 2003

FILE  Office: KINGSTON, JAMAICA

Date:

IN RE: Applicant: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I).

ON BEHALF OF APPLICANT:

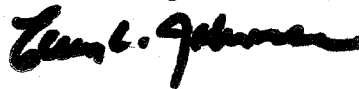
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Assistant Officer in Charge (AOIC), Kingston, Jamaica. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Jamaica. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The record indicates that the applicant was ordered deported from the United States on September 27, 1995, as an alien who had remained in the United States longer than permitted and as an alien convicted of a crime involving moral turpitude. The alien was subsequently deported to Jamaica in 1999. The record indicates that the applicant married a U.S. citizen on June 4, 1998, and that he is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility in order to reside with his wife and child in the United States.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

.

(1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

.

The AOIC found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S.

citizen spouse and child. The application was denied accordingly. See *AOIC Decision*, dated September 20, 2002.

On appeal, counsel indicates that the applicant's criminal conviction was legally flawed due to ineffective assistance of counsel, and that the applicant should not have been placed into deportation proceedings or ordered deported. This office finds that even if counsel's challenge to the applicant's 1995 deportation order were timely, the AAO has no jurisdiction over such a challenge, and that the challenge would need to be directed to the Board of Immigration Appeals (BIA). See 8 C.F.R. § 3.2.

Counsel asserts that the applicant, himself, suffers financial hardship in Jamaica and that he also suffers medical problems. Section 212(h) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent. Congress specifically does not mention extreme hardship to the applicant him or herself. All assertions regarding medical or financial hardship to the applicant himself will thus not be considered.

Counsel additionally asserts that the applicant's wife (Mrs. [REDACTED]) and the applicant's child will suffer financial and emotional hardship. Counsel states that Mrs. [REDACTED] is not working and has no money. Counsel asserts further that Mrs. [REDACTED] would not be able to find work in Jamaica if she relocated there and that relocation to Jamaica would cause her to lose her familial support network. Mrs. [REDACTED] submitted three letters to the Immigration and Naturalization Service ("INS", now known as the Bureau of Citizenship and Immigration Services, "Bureau") to support the assertion that she suffers financial hardship trying to support herself and her daughter and that she suffers from migraines and depression due to her separation from her husband.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provided a list of factors the Board of Immigration Appeals (BIA) deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The BIA noted in *Cervantes-Gonzalez*, that the alien's wife knew that he was in deportation proceedings at the time they were married. The BIA stated that this factor went to the wife's

expectations at the time they wed because she was aware she might have to face the decision of parting from her husband or following him to Mexico in the event he was ordered deported. The BIA found this to undermine the alien's argument that his wife would suffer extreme hardship if he were deported. Cervantes-Gonzalez at 565-566.

In the present case, it is noted that the applicant and Mrs. [REDACTED] got married after the applicant was ordered deported from the United States. It is further noted that Mrs. [REDACTED] appears to have spent a significant amount of time living with the applicant in Jamaica, and that the applicant's child was born in 2001, after the applicant was deported from the United States. All of these factors undermine the argument that Mrs. [REDACTED] and the applicant's child will suffer extreme hardship if the applicant's waiver of inadmissibility is not granted.

Moreover, the claim that Mrs. [REDACTED] suffers financial hardship because she is not working is contradicted by her December 1, 2000, letter stating that she was promoted from an electronics technician to computer graphics and then to inventory personnel for Digital Design, and that her former employer told her there would always be a job available for her. Furthermore, Mrs. [REDACTED] assertion that she suffers from migraines and depression is unsupported by any medical evidence in the record, and the assertion that her daughter does not know her father relates to the type of hardship normally suffered by family members upon the deportation or exclusion of an alien.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

The U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. Counsel thus also failed to establish that Mrs. Hernandez would suffer extreme hardship based solely on financial reasons if the applicant were removed from the United States.

A review of the documentation in the record, when considered in its totality therefore reflects that the applicant has failed to show that his U.S. citizen spouse and child would suffer extreme hardship if he were barred from admission into the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.